

**SANITIZED DECISION – DOCKET NO. 05-407 P – GEORGE V. PIPER, ALJ –
SUBMITTED for DECISION on JANUARY 25, 2006 – ISSUED on FEBRUARY 27, 2006**

SYNOPSIS

**PERSONAL INCOME TAX -- FINAL FEDERAL RULING ON FEDERAL
INCOME TAX LIABILITY NOT REVIEWABLE BY STATE TAX COMMISSIONER OR
THIS TRIBUNAL** – A final federal ruling, as here, on the federal income tax liability of the taxpayer is not reviewable by the West Virginia State Tax Commissioner or the West Virginia Office of Tax Appeals in proceedings on a West Virginia income tax assessment based upon that final federal ruling.

FINAL DECISION

On June 16, 2005, the Accounts Monitoring Unit of the Internal Auditing Division (“the Division”) of the West Virginia State Tax Commissioner’s Office (“the Commissioner” or “the Respondent”) issued a West Virginia personal income tax assessment against the Petitioner. This assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia Code. The assessment was for the year 2001 for tax, interest, through June 16, 2005, and additions to tax, for a total assessed liability. Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked July 13, 2005, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. See W.Va Code § §§ 11-10A-8(1) [2002] and 11-10A-9 (a)-(b) [2002].

Subsequently, notice of a hearing on the petition was sent to the parties and a hearing was held in accordance with the provisions of W.Va. Code § 11-10A-10[2002] and W.Va. Code St. R. § 121-1-61.3.3 (Apr. 20, 2003).

FINDINGS OF FACT

1. On April 10, 2002, the Petitioner and his spouse filed their joint 2001 Federal 1040 (U.S. Individual Income Tax return) reflecting no wages, salaries, etc., no adjusted gross income, and no tax due. Line 59 of said return reflected federal income tax withheld and that Petitioners were claiming a refund due.

2. Attached to the 2001 federal 1040 was a crude affidavit which, among other things, (a) stated that the return was not being filed voluntarily, (b) that a 1040 with “zeros” inserted in the spaces provided qualified as a return, (c) that the filed return qualified as a claim for refund, and (d) that Section 61 of the IRS Code does not mention that “wages or “salaries” or “compensation for personal services” qualifies as taxable income.

3. Petitioner’s Exhibit No. 1 consists of a Notice of Deficiency (“Notice”) dated October 24, 2003, from the Internal Revenue Service (“IRS”), stating that a deficiency (increase) in Petitioner’s income tax had been determined and that should he want to contest this determination in court before making payment he must do so in writing within ninety (90) days, the last date to petition being January 22, 2004.

4. On December 16, 2003 (Petitioner’s Exhibit No. 2), Petitioner responded to the notice stating among other things that, (a) before he filed or paid or did anything he the (Petitioner) had to establish whether the notice was sent to him legally, had the force and the effect of law, and whether the sender had any authority to send said notice, (b) that nothing in the IRS Code makes him have to comply with letters or alleged “determinations;” sent to him by various and secondary employees of the IRS, (c) that before Petitioner had to do anything he would have to see a delegation order from the Secretary of the Treasury delegating that the signatory, had the

authority to send such a deficiency notice, and (d) that Petitioner was prepared to sue the government should it assess and collect the deficiency by distraint.

5. Also, on December 16, 2003, Petitioner sent a Freedom of Information Act (“FOIA”) request to the IRS requesting the same items, authorizations, and delegations set forth in Petitioner’s Exhibit No. 2, which the IRS then responded to on January 23, 2004, to the effect that no “assessments” concerning Petitioner have been made through then for tax year 2001 and that the Commissioner of the IRS had indeed delegated authority to others to act on his behalf.

6. Petitioner’s Exhibit No. 9 is a “FINAL NOTICE OF INTENT TO LEVY AND NOTICE OF YOUR RIGHT TO A HEARING” dated October 8, 2004, stating that Petitioner had not responded or paid the amounts owed and that Petitioner was encouraged to call IRS immediately to discuss payment options so that the matter could be resolved without the selling or taking of Petitioner’s property.

7. Petitioner’s Exhibit No. 10, dated October 21, 2004, consists of Petitioner’s signed request for a “Collection Due Process Hearing” and a request again that documents, verifications, and delegations be provided to Petitioner at or before the hearing as well as his request that said hearing be by correspondence.

8. Also contained within Petitioner’s Exhibit No. 10 are IRS’ responses to Petitioner’s missives, one of which is a January 25, 2005 letter apprising Petitioner of the fact that the items being requested by Petitioner are items that, “Courts have determined are frivolous or groundless”, or “Appeals does not consider because the same are based upon moral, religious, political, constitutional, conscientious, or similar grounds.” Further, the IRS forwarded to Petitioner copies of court opinions setting forth the authority of the United States Tax Court which had held that a tax protester was not entitled to contest his tax liability before the IRS

Appeals Office because he had already received a deficiency notice and had disregarded his opportunity to challenge the liability.

9. The West Virginia personal income assessment resulted because the IRS changed the Petitioner's 2001 federal income tax return and the Petitioner did not notify the Respondent of the changes within ninety (90) days as required by W.Va. Code § 11-21-59.

10. On April 26, 2005, the Respondent corresponded with Petitioner stating, "I am unable to suspend your West Virginia tax bill for additional time. If your West Virginia bill advances to the assessment stage before you receive a decision from the United States Tax Court, you can appeal to the West Virginia Office of Tax Appeals."

11. In State's Exhibit 2 (attached to the petition for reassessment) was a cover letter which clarified, "other alleged errors" in said petition wherein Petitioner's opined that the assessment is based upon changes made to his and his wife's 2001 Federal 1040 substantially because of a change in their filing status from "Married-Jointly" to "Married-Separately" and that the "substitute return" containing this filing change is a key part of Petitioner's appeal in the United States Tax Court and, therefore, Petitioner's federal tax dispute remains unresolved.

12. At hearing Petitioner testified that he believed his dispute with the IRS had not passed the liability stage but that he went to collection simply because the IRS refused to address the liability issue which he had the legal right to raise.

13. During the course of the proceedings the presiding administrative law judge stated for the record, the following: (1) should the ALJ find that the matter before the U.S. Tax Court is not one of the liability but that of collection (liability already fixed), the assessment issued by Respondent will be affirmed, (2) the Office of Tax Appeals may not by law hold any tax statute

unconstitutional on its face, and therefore, to prevail in this matter the Petitioner must present case law proving that the tax statutes are not applicable to him.

DISCUSSION

Because the legal arguments presented by Petitioner are essentially identical to those presented by even more famous tax protesters and because his arguments have been found to be without merit since the inception of the Sixteenth Amendment to the United States Constitution, the only issue left to be decided is whether this tribunal should delay its decision pending a final decision by the IRS as to the Petitioner's 2001 federal tax liability.

The answer to that inquiry is a resounding, "No," because nothing remains to be decided concerning liability at the federal level.

Petitioner's original 2001 tax filing with the IRS dated April 10, 2002 showed no wages, although the Petitioner had received a W-2 from his employer, showed no other income, showed no adjusted gross income, showed no tax due, and set forth a refund claim for the amount that his employer had withheld from his 2001 salary. This is one of the classic tax protester techniques, among many others. *See e.g., Laing v. United States*, 423 U.S. 161, 174 (1976); *United States v. Sullivan*, 274 U.S. 259, 263-264 (1927); *Brushaber v. Union Pac. R.R.*, 240 U.S. 1, 19-20 (1916); *Planned Investments, Inc. v. United States*, 881 F. 2d 340, 343-344 (6th Cir.1989); *Roat v. Comm'r*, 847 F. 2d 1379, 1381 (9th Cir. 1988); *Ficalora v. Comm'r*, 751 F.2d 85, 87 (2d Cir. 1984); *Woods v. Comm'r*, 80 T.C. 1111 (1983); *McCoy v. Comm'r*, 76 T. C. 1027, 1029-1030 (1981), *aff'd*, 696 F.2d 1234 (9th Cir 1983).

It is also obvious from the hearing record that Petitioner used a change by the IRS in his tax filing status from married filing jointly to married filing separately as a ruse or device to

disguise his real purpose which was to unlawfully evade payment of both federal and state income taxes. Proof of same can be found in the arguments he set forth in his petition for reassessment, in his correspondence with the IRS, and in his briefs submitted to this tribunal, which were almost taken verbatim from tax protester manuals, newsletters, etc, and which have all been roundly dismissed, by the courts, to-wit: the filing of a tax return is voluntary, payment of tax is voluntary, a zero return can reduce ones' tax liability, wages, tips, and other compensation are not income, federal income taxes constitute a taking of property without due process of law thereby violating the Fifth Amendment to the United States Constitution, a notice of deficiency is invalid because it was not signed by the Secretary of the Treasury or by someone else with delegated authority, etc.

What is even clearer is that, while Petitioner "sparred" with the IRS, at the outset as to whether he was required to pay taxes, whether IRS officials other than the Commissioner of IRS could lawfully send him a deficiency notice, and whether payment of income taxes is voluntary, his ninety (90)- day appeal period to properly contest the liability had expired.

Because Petitioner may no longer contest his tax liability with the IRS he may no longer contest same with the Respondent. Accordingly, this tribunal finds him liable for the whole of the assessment.

CONCLUSIONS OF LAW

Based upon all of the above it is **HELD** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon a petitioner-taxpayer, to show that the assessment is

incorrect and contrary to law, in whole or in part. *See* W. Va. Code § 11-10A-10(e) [2002] and W.Va. Code St. R. § 121-1-63.1 (Apr 20, 2003).

2. The Petitioner- taxpayer in this matter has failed to carry the burden of proof with respect to his contention that the IRS has yet to make a finding of liability against him for tax year 2001. *See* W.Va. Code St. R. § 121-1-69.2 (Apr. 20, 2003).

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the personal income tax assessment issued against the Petitioner for the year 2001 for tax, interest, and additions to tax, **totaling**, should be and is hereby **AFFIRMED**.

Pursuant to the provisions of W.Va. Code § 11-10-17 (a) [2002], interest continues to accrue daily on this personal income tax assessment until this liability is fully paid.